

1 LATHAM & WATKINS LLP
2 Michael W. De Vries (SBN 211001)
3 *mike.devries@lw.com*
4 Andrew Fossum (SBN 250373)
5 *andrew.fossum@lw.com*
6 650 Town Center Drive, 20th Floor
7 Costa Mesa, California 92626
8 Telephone: (714) 540-1235
9 Facsimile: (714) 755-8290

10 Attorneys for Plaintiff
11 SINHDARELLA, INC.

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 SINHDARELLA, INC., a California
16 corporation,

17 Plaintiff,

18 v.

19 KEVIN VU, an individual, d/b/a/ THE
20 BOILING CRAB; and DOES 1 through 10,

21 Defendants.

CASE NO. C 07-04353 WHA

Honorable William H. Alsup

**DECLARATION OF ANDREW FOSSUM IN
SUPPORT OF PLAINTIFF SINHDARELLA,
INC.'S MOTION FOR PRELIMINARY
INJUNCTION**

Date: February 7, 2008
Time: 8:00 a.m.
Courtroom: 9

DECLARATION OF ANDREW FOSSUM

I, Andrew Fossum, hereby declare under penalty of perjury that:

1. I am an active member of the State Bar of California and an attorney with the law firm of Latham & Watkins LLP, counsel of record for Sinhdarella, Inc. The facts set forth herein are within my personal knowledge, and if called as a witness, I could and would testify competently thereto.
2. Attached hereto as Exhibit A are true and correct copies of screen captures taken from reviews for Sinhdarella, Inc.'s THE BOILING CRAB® restaurants appearing at www.yelp.com on December 4, 2007.
3. Attached hereto as Exhibit B are true and correct copies of PDF's taken from reviews for Defendant Kevin Vu's restaurant on www.yelp.com on December 4, 2007.
4. Attached hereto as Exhibit C is a true and correct copy of a the domain name registration or "whois" entry taken from www.whois.net on December 13, 2007.
5. Attached hereto as Exhibit D is a true and correct copy of a printout taken from the website appearing at <http://www.theboilingcrawfish.com> on December 13, 2007.
6. Attached hereto as Exhibit E is a true and correct copy of a letter received from Christopher Hays, counsel for defendant Kevin Vu, on December 7, 2007.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 27th day of December, 2007 at Costa Mesa, California.



Andrew Fossum

EXHIBIT A



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Los Angeles

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The Boiling Crab

based on 65 reviews Rating Details »

Categories: Cajun/Creole, Seafood [edit]

14241 Euclid St # C116

Garden Grove, CA 92842

(714) 265-2722

www.myspace.com/theboilingcrab



Add Photos

Hours:

Mon-Fri 3:00 p.m.-10:00 p.m.
Sat-Sun 12:00 p.m.-10:00 p.m.

Takes Reservations: No

Waiter Service: Yes

Good for: Dinner, Lunch

Edit Business Info Link to This Page

Send to Friend

Bookmark

Send to Phone

Write a Review

Print version

First to Review Rob K.

Price Range: \$\$

Parking: Private Lot

Good for Groups: Yes

Delivers: No

Wheelchair Accessible: Yes

BYOB: No

Accepts Credit Cards: Yes

Attire: Casual

Good for Kids: Yes

Take-out: Yes

Outdoor Seating: No

Corkage: No

You Might Also Consider

Scott's Seafood

Costa Mesa, CA
21 reviews

Specializing in the freshest seafood and the finest prime-aged steaks. Join us for Lunch, Dinner, or Saturday and Sunday Brunch.

65 Reviews for The Boiling Crab

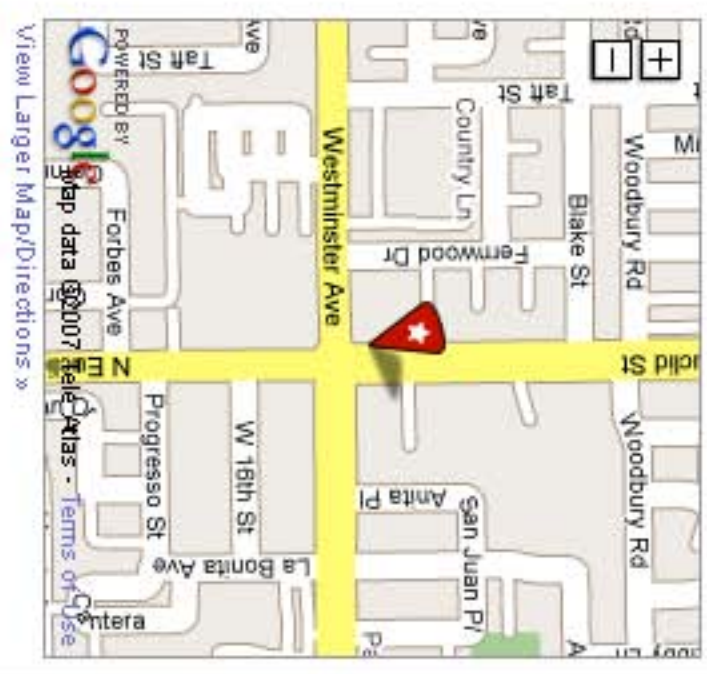
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Search Reviews

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11/30/2007



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People Who Viewed This Also Viewed...



The Boiling Crab
62 reviews
Garden Grove, CA
Category: Cajun/Creole



The Rockin' Crawfish
22 reviews
Westminster, CA
Category: Cajun/Creole



The Crawfish House
7 reviews



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Los Angeles

Search

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The Boiling Crab

★★★★★ based on 62 reviews [Rating Details](#) »

Categories: Cajun/Creole, Seafood [\[edit\]](#)

13892 Brookhurst St.

Garden Grove, CA 92843

(714) 636-4885

www.theboilingcrab.com

Hours:

Mon-Fri 3:00 p.m.-10:00 p.m.
Sat-Sun 12:00 p.m.-10:00 p.m.

Takes Reservations: No

Waiter Service: Yes

Good for: Dinner

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[First to Review](#) [Abbe C.](#)

Price Range: \$\$

Parking: Private Lot

Good for Groups: Yes

Delivers: No

Wheelchair Accessible: No

BYOB: No

Accepts Credit Cards: Yes

Attire: Casual

Good for Kids: Yes

Take-out: Yes

Outdoor Seating: No

Corkage: No



Add Photos

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Scott's Seafood

Costa Mesa, CA
★★★★★ 21 reviews

Specializing in the freshest seafood and the finest prime-aged steaks. Join us for Lunch, Dinner, or Saturday and Sunday Brunch.

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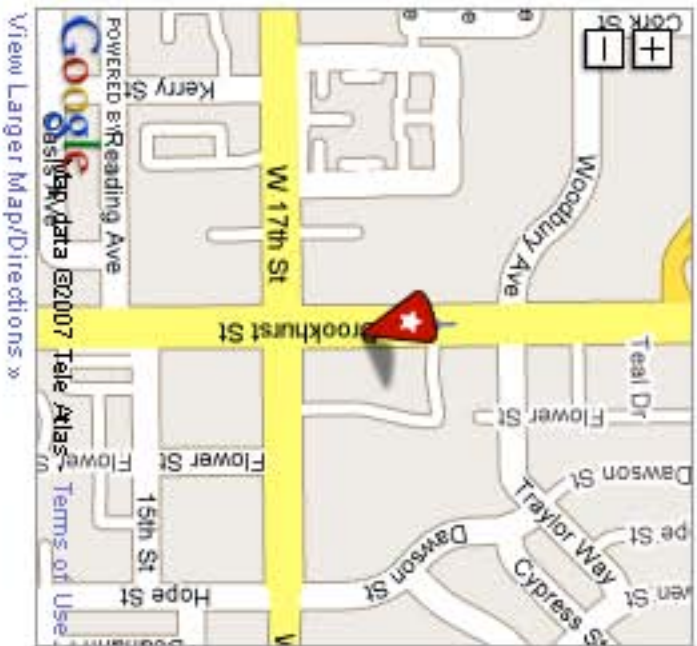
62 Reviews for The Boiling Crab

Sort by: Recent + Votes | Time | Rating



Search Reviews

12/01/2007



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The Crawfish House
★★★★★ 7 reviews
Garden Grove, CA
Category: Cajun/Creole



The Rockin' Crawfish
★★★★★ 22 reviews
Westminster, CA
Category: Cajun/Creole



The Cajun Corner
★★★★★ 18 reviews



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The Boiling Crab

★★★★★ based on 60 reviews Rating Details »

Categories: Cajun/Creole, Seafood [edit]

Neighborhood: Alhambra

742 W Valley Blvd

Alhambra, CA 91803

www.theboilingcrab.com



Add Photos

Price Range: \$\$

Attire: Casual

Takes Reservations: No

Waiter Service: Yes

Good for: Dinner

Accepts Credit Cards: Yes

Good for Groups: Yes

Delivers: No

Wheelchair Accessible: Yes

BYOB: No

Parking: Private Lot, Street

Good for Kids: Yes

Take-out: Yes

Outdoor Seating: No

Corkage: No

[Edit Business Info](#) [Link to This Page](#)
[First to Review](#) Justin S.

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Los Angeles, CA

★★★★★ 13 reviews

213.626.0535

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60 Reviews for The Boiling Crab

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#2



12/03/2007

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Crabulous

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Rosemead, CA

Category: Seafood



The Boiling Crab

★★★★★ 62 reviews

Garden Grove, CA

Category: Cajun/Creole



The Cajun Corner

★★★★★ 18 reviews

Category: Cajun/Creole

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Search

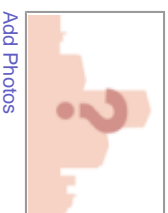
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The Boiling Crawfish

2.5 star rating based on 23 reviews [Rating Details »](#)

Categories: [Cajun/Creole](#), [Seafood](#) [\[Edit\]](#)

393 N Capitol Ave
San Jose, CA 95133
(408) 347-8344



[Add Photos](#)

Price Range: \$\$

Attire: Casual

Delivers: No

Wheelchair Accessible: Yes

Corkage: No

[Edit Business Info](#)

[Link to This Page](#)

Accepts Credit Cards: No

Good for Groups: Yes

Take-out: Yes

Outdoor Seating: No

Parking: Private Lot, Street

Good for Kids: No

Waiter Service: Yes

Good for: Dinner, Late Night

First to Review



Kenny W.

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23 Reviews for The Boiling Crawfish

Sort by: [Recent + Votes](#) | [Time](#) | [Rating](#)

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0
10

Mark'stine H.
San Jose, CA

4 star rating

11/23/2007

This place was originally my favorite crawfish joint until I came back after several months hiatus and their garlic butter flavor got all sweet! I don't like how small the menu.

I also do not like how you have to buy water here..

If only Gumbo Jumbo gave more crawfish.. then they'd be the best crawfish restaurant I've tried to date.

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[Link to This Review](#)

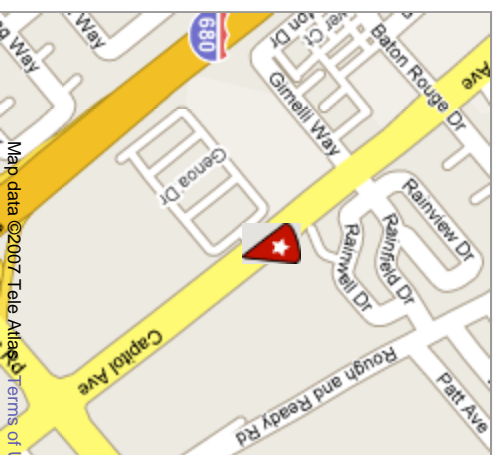
3 star rating

11/13/2007

Elite
07

243
394

I planned on taking my friend to Crawdaddy's for her birthday. Unfortunately, Crawdaddy's was closed because they ran out of fresh crawfish. I was so heartbroken and also deathly scared



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Crawdaddy's Cajun Seafood...
4.5 stars 22 reviews
San Jose, CA
Category: Cajun/Creole



Gumbo Jumbo
4.5 stars 42 reviews
San Jose, CA
Category: Cajun/Creole



Cajun Crab House
4.5 stars 101 reviews
San Jose, CA
Category: Cajun/Creole



Thoa Cafe
4.5 stars 2 reviews
San Jose, CA

12/4/2007

Susy effing C.
San Francisco, CA

because I did not want to disappoint the bday gal. However, it also makes me glad to know Crawdaddy's doesn't use frozen crawfish.

So I had to take her here, to the Boiling Crawfish. The plaza was kind of scary. There were cops outside the karaoke joint a few doors down. But anyway, on to the food.

The crawfish here ad definitely much bigger than Crawdaddy's. However, the flavor isn't as wonderful. ALSO!! A lot of the crawfish in our bag had EGGS!! Gross..4 pounds of crawfish, 2 crabs, and 1 pound of shrimp later, we weren't full. We tried to go to Popeye's afterwards but it was closed.

Susy effing C was sad and not completely full. It's okay, my main goal was to make the birthday girl happy and I think I achieved it... until I found out she had tons of little cuts on her fingers and mouth from those lil prickly delicious fuckers.

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People thought this was: Useful (1) Funny (1) Cool (1)



Liz M.
San Jose, CA

8
59

I went with my girlfriends on a Thursday night and the place was busy, it's a cool place to kick it with your friends, get your drank on. The venue is decorated cheesy but cute, service was attentive, it's also expensive. I am used to having shrimp & crawfish prepared in exceptional manner so there is not much I can say about the boiled ass mf shellfish, frozen corn & sausage in some butter & garlic.

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People thought this was: Useful (1) Funny (1) Cool (1)



Jennifer N.
San Jose, CA

0
3

I had came here to eat with a friend of mines, and had ordered about 4lbs of crawfish. Before they had really good crawfish, but lately that I've came back it's been really not that great. But I mean, it could be just one of those days. Our crawfish wasn't even a full complete one. We found tons of heads with no bodies connected, so technically we only got only 2lbs of full crawfish.

THE TASTE WAS SO BLAND. It wasn't even good.. The waitresses there seem bored, and act like they don't wanna serve us. Bad environment. Their restaurant looks dirty, their bathrooms are unsanitary. I think they changed the owner or something, it's nasty place now. I'm planning to never go there ever again.

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Marialinh L.
San Jose, CA

22
26

2 star rating

11/11/2007

Okay....went for the first time because I have heard great things. The menu is small...crawfish, crab, sausage, corn and choice of cajun, garlic butter etc.

I do not think I will go back because I rather go to Cajun Crab House because it is clean but a lot pricier. This place gets 2 stars because the CRAWFISH boils were good. (Cajun Mild Extra Garlic Butter). We got it with corn and they threw the corn in too early because it was overcooked. The CRAB we ordered was big but did not come out in a plastic bag like the crawfish boils. Also, it took



Poor House Bistro
★★★★☆ 88 reviews
San Jose, CA
Category: Cajun/Creole

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Bai Tong
★★★★☆ 13 reviews
Saratoga, CA

Gochi Japanese Fusion Tapas
★★★★☆ 183 reviews
Cupertino, CA

Ramen House Ryowa
★★★★☆ 200 reviews
Mountain View, CA

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20 minutes for our crawfish once we ordered and we were of 2 tables on a Sat. afternoon and then another 20 minutes for our 1 crab. Oh...but hey..I got my Negro Modelo beer in no time :) Waitress was nice but never checks on you after your food comes.

After indulging in all the food, I went to wash my hands. (I do not recommend using their facilities). A restaurant that does not focus on the cleanliness of the bathroom deeply concerns me! (remodel please!)

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People thought this was: Useful (1)



0
5

Zane T.
San Francisco, CA

3 star rating

11/19/2007

My friend and I were craving crawfish and called up my brother and asked him where to go he recommended this place.

First off, I think I didn't come during the "season" but all I know is that I walked away still hungry after eating 5lbs of crawfish, 2 lbs of shrimp (which was good btw) and 1lbs of oyster between 4 people. Beside the point that it wasn't all that filling, all my friends' stomachs started hurting and I got hives! I believe they didn't clean their products very well.

Only reason I gave 3 stars is that their shrimp was really good reminded me of shrimp trucks in Hawaii.

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8
28

henya h.
San Jose, CA

1 star rating

11/05/2007

I was here during their grand opening week. During this time, it was one of the first crawfish restaurants in the bay area. I was super excited they finally have a crawfish joint so I don't have to plan my next itinerary to SoCal.

What do you know, this girl's dream was shattered into pieces and then some. It is nothing compare to the crawfish joints in SoCal. Normally, I would give restaurants 2 stars even the food isn't that great but this place needs major damage control.

Food: The crawfish didn't have enough flavor. Their sauce is way too bland.

Service: Our waitress was a joke. She only gave us a pinch of salt and pepper in the small container so we asked her to give us more. Then she reasoned with us saying that what she gave us was enough and we don't even need lime to eat the crawfish. Oh c'mon lady, it's just salt and pepper. I didn't ask to have your first born child. The waitress also didn't come around to check up on us either. And might I remind you that this is during their grand opening: shouldn't they welcome and cater to customer's needs during this period of time?

I don't care for the decoration of the restaurant if the food and service are good. Although the place could use some essences.

apparently, under achieving is the new biz motto.

I'm glad there are plenty of craw fish restaurants in the bay area so I never have to go to this place for my fix of crawfish.

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8
56Justin G.
Santa Clara, CA

3 star rating

09/26/2007

Money can go by really quickly here as you go through bags and bags of crawdad. If you are patient and love crawdads then its what you should order. But if you like shrimp better order the shrimp, it'll actually fill you up a lot faster. Ok place to eat but there's just a handful of these places in the southbay so you gotta take what you can get.

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People thought this was: Cool (1)

20
121Brian P.
Milbrae, CA

3 star rating

09/30/2007

This is the first experience at one of these restaurants. When my friend told me to come to the "boiling crab" i was thinking.... southern Louisiana crab boil... but it was way different.. Vietnamese owned crab boil... quite different. The menu is very simple, with just shrimp, crawfish, crab(but they didn't have crab.. why call it the boiling crab if you don't have crab in in stock), clam.. and on the side you can order Louisiana sausages, and corn.. etc..). the food came out pretty came... but it was way to simple.. your food come in a plastic bags..but the seafood has pretty good flavor.

All in all.. it's pretty average... the prices are reasonable... the price for seafood is a lot cheaper then most restaurants.. and the beers are cheap. This is more of a hangout after you eat dinner... because this place will not fill you up.

ooo yeah CASH ONLY!

[Bookmark](#)[Send to a Friend](#)[Link to This Review](#)0
5Doug V.
San Jose, CA

4 star rating

10/08/2007

I like the corn drenched in garlic butter sauce...as for the crawfish its good. I like the shrimp better.

[Bookmark](#)[Send to a Friend](#)[Link to This Review](#)2
22Tuan D.
San Francisco, CA

4 star rating

10/25/2007

for the price this place isnt bad at all. if youre coming here for dinner then forget about it. you will not get full. this place is more of a hang out spot for the seafood cravers and wants to snack and just hang out.

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People thought this was: Useful (1) Funny (1) Cool (1)

0
16S.M.
San Jose, CA

1 star rating

10/23/2007

Crawfish was not good at all! The first bag of crawfish was ordered mild - it had absolutely no flavor whatsoever. Ok, maybe that's my bad for getting it mild in the first place. So I got another bag spicy this time, but it still wasnt flavorful or spicy. Disappointed, I ordered some sides to fill me up thinking that they can't possibly mess that up too - WRONG. Corn was soggy and sausages were tough to

chew.

On top of that, I kinda got a bad vibe from the place - like I was out of place or something. Right when I walked in, it didn't feel like a restaurant. Nothing but an asian crowd, trance music pulsed loudly thru the speakers and most of the guys in there had white wifebeater tanks on and drinking heinekens and girls wore \$100+ jeans with high heels. It was a bit much for me.

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0
2

Michelle N.
San Jose, CA

4 star rating

10/25/2007

This place is pretty good, except it was better when it was opened. I go here about once or twice a month. Have friends who eat it 2x a week and complain they are getting fat, well, what do you expect, the sauce is mostly butter and spice. I don't know why ppl say this place is bad or have bad service, but its better than crawdaddy or other crawfish restaurants around here. I heard jumbo gumbo has really great crawfish as well. The only thing about boiling crab is that sometimes the waiter does not understand what you are ordering. we had to repeat "sausage" 10x to 1 waiter who spoke more spanish...

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Elite
'07

27
146

Susan D.
San Jose, CA

3 star rating

05/21/2007

Ok, first I have to say I've never been to a place like this before. It was an enjoyable experience. Getting dirty and eating with your hands is fun - just don't wear white clothes or you'll have to sport a bib. Haha.

It is a lil restaurant hidden in the strip of shops beside Merry'n's and 24 Hour Fitness. My boyfriend and I ordered 1lb of shrimp, a crab and 2 corn. We tried to get some sausages but they were out. The food was good enough. It seemed to be expensive but then, I wouldn't know so well. The crab was 11.99 lb, the shrimp was 8.99 lb and the corn .50 each. After only 1 crab, 1lb of shrimp, 2 corns and 2 cokes, our bill was 37.00... that seems kinda high.

The outside isn't nice but the inside is clean and cute. We were surprised to see that the place was filled with Vietnamese peeps. I enjoyed the 'scenery' as my boyfriend is Vietnamese too. Haha. I think my boyfriend liked the Asian girlies too. :)

I think they could offer some sides other than corn. How about some asparagus sticks or something else that's easy to eat with your hands too? Lol

It would've been a 4 star but there are a lot of other places that are the same price that I enjoy a lot more.

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People thought this was: Useful (4) Funny (2) Cool (4)



0
20

Robert and Mimi Y.
San Jose, CA

3 star rating

07/07/2007

This place is a favorite to two of my boyfriend's sister and her friend, Anny and Debi. FYI- ORDER CRAWFISH! The spicy sauce is great, although do not go there if you have a canker sore. The sausages are pretty good but overall it's a lot of work for such little amount of meat from the crawfish.

I also wish there were more options for beverages because they only have soda.

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People thought this was: Cool (1)



2
36

Littleone P.
San Jose, CA

2 star rating
The food wasn't bad! Its not everywhere you can find crawfish boil outside of Luisiana! Prepare to dig in with your hands and roll up your sleeves! But..couldn't understand why they didn't have crab last night though :(

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0
14

emma s.
San Jose, CA

2 star rating

05/28/2007

I thought I would eat at least 3 times before I yelp... But, what the heck, for 2 stars and with only 3 items on the menu, I don't think sooo....

The menu was simple, too simple: Boiled crab, shrimps or crayfish served in a clear plastic bag, with chili sauce or without. You may add corn on the cob and Louisiana sausage into the bag.

The place was drabby. Few flat screen TVs, no wall deco, except for a few paper crabs and lobsters here and there, white neon lights... looks as though you've traveled into a third world country's home-based diner. This is the type of food you go for the atmosphere and ambience. None found here. Stay home. How hard is it to boil plastic bags?

I noticed waiters/waitresses pushing the huge trash can to clean up and NONE bothered to wash their hands afterward!! Ewww... :oP

It is more of an appetizer than a meal. You will definately need to go elsewhere afterward to fill up your stomach.

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People thought this was: Useful (2)



5
35

Katie W.
San Jose, CA

1 star rating

09/29/2006

First off, this place should be called, "The Boiling Water" because they NEVER HAVE CRABS. The first time I went here was a Friday night; there were barely any customers and yet they were OUT OF CRABS. The second time was a Sunday afternoon, no customers, again OUT OF CRABS. Third time was a Thursday night - surprise, surprise, OUT OF CRABS!

I only stayed the first time to try the other items on the menu. Everything is overpriced and boiled & served in a plastic bag. Crawfish was ok, shrimp was below avg, corn (3") and sausage (1/3 of a hotlink) was boiled in the same bag as the shrimp. Their "cajun style" sauce consists of oil and cajun seasoning from your local market (try Zataran's, its much better).

This horrible experience was due to my stupidity. I kept coming back because I thought they serve crabs, but they don't.

This place has been open for a few months. I believe they're planning to close at any moment because they don't believe in keeping any crabs in-stock. They like to turn away customers before having any business. You might think they were out of crabs because they sold out, but in reality, they're just too cheap to keep any in-stock.

I rated them 1 star because I had to (yelp doesn't let you rate 0 stars).

[Bookmark](#) [Send to a Friend](#) [Link to This Review](#)

People thought this was: Useful (2) Funny (5)



Elite
07

110
181

Jenn T.
San Jose, CA

1 star rating

08/09/2006

We came here since the concept, which has become pretty popular in southern cali, was pretty new/unique to the south bay area. I came with a group of 8, including Kenny W, whose review pretty much summed it up. This place is run by Vietnamese. I would have to add that its quite a bit of work eating here for the amount of food that actually ends up in your stomach. Utensils are not required as everything can (and probably will be) eaten with just your hands. Paper plates, butcher paper covered tables, and plastic bibs provide most of the decor.

I asked one of the staff, and she claimed that this place is not associated with the popular Boiling Crab in LA which has better reviews: <http://www.yelp.com/bi...> I also asked about how the seafood is cooked: steamed in pots with seasonings - not in those plastic bags they give you the food in.

Summary - there's really nothing special about this place... you can probably do the same at home for cheaper.

Prices as of 8/8/2006:
- \$0.50 for sausage or corn
- \$10/lb for crab
- \$8/lb for crawfish
- ... i have the menu at home... will be back to update the rest of the prices

[Bookmark](#) [Send to a Friend](#) [Link to This Review](#)

People thought this was: Useful (4)

3 star rating

05/28/2007

Took my wife here for dinner. We got a table right away. About 15 minutes later, the dinner crowd rushes in and a line was formed all the way out to the door. Thank God we didn't have to wait. We ordered 1lb of shrimp, 1lb of crawfish, 1 crab, some corn and sausages. Ok we were hungry. We waited for our food, about 20 minutes later, the waitress brought out 3 plastic bags containing our food, steaming hot. We got down and dirty and attacked the food right away with our fingers. It was actually really good. We really liked the shrimp. The crab was just OK, kinda small and dry. The crawfish was small too. Overall we liked the food, kinda pricey though. We left smelling like crawfish and still a bit hungry.

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People thought this was: Useful (1)



1
4

tom p.
San Ramon, CA



10
109

bella h.
Beverly Hills, CA

3 star rating
03/12/2007
damn some yelpers can be a little harsh when it comes to rating places. this place is good to eat if you are willing to get down to the nitty gritty and have yo hands reak of crawfish, shrimp, crab, and etc. just trust that no matter how much you scrub and wash yo hands it still smells like crawfish at the end of the day. overall it was a fun experience hence i wish the crawfish were bigger. i heard the la location was better because the crawfish is bigger.

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People thought this was: Cool (2)



Elite
'07
14
77

Kenny W.
San Jose, CA

2 star rating
08/09/2006
crawfish cajun style. i believe their crawfish is freshwater so its just not the same. there was nothing spectacular about the shrimp. it was spicy stuff but nothing beyond that, not quite cajun. \$10/lbs for the crab is pretty bad value. quality of the seafood is subpar for the price. we ended up forking over \$20 each but in the end, we were still hungry and had to hit the wienerschnizel next door.

Bookmark Send to a Friend Link to This Review



1
26

phuc l.
Milpitas, CA

3 star rating
11/28/2007
it's ok

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1 to 23 of 23

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EXHIBIT C

**WHOIS Lookup****Lookup registration data
for domains.**WHOIS information for: theboilingcrawfish.com:

[whois.melbourneit.com]

Domain Name..... theboilingcrawfish.com

Creation Date..... 2007-11-09

Registration Date.... 2007-11-09

Expiry Date..... 2008-11-09

Organisation Name.... Bryan Dang

Organisation Address. 499 Avalani Avenue

Organisation Address.

Organisation Address. San Jose

Organisation Address. 95133

Organisation Address. CA

Organisation Address. UNITED STATES

Admin Name..... Bryan Dang

Admin Address..... 499 Avalani Avenue

Admin Address.....

Admin Address..... San Jose

Admin Address..... 95133

Admin Address..... CA

Admin Address..... UNITED STATES

Admin Email..... bryanbao@yahoo.com

Admin Phone..... +1.4084495590

Admin Fax.....

Tech Name..... YahooDomains TechContact

Tech Address..... 701 First Ave.

Tech Address.....

Tech Address..... Sunnyvale

Tech Address..... 94089

Tech Address..... CA

Tech Address..... UNITED STATES

Tech Email..... domain.tech@YAHOO-INC.COM

Tech Phone..... +1.6198813096

Tech Fax.....

Name Server..... yns1.yahoo.com

Name Server..... yns2.yahoo.com

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EXHIBIT D



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LAW OFFICES OF
CHRISTOPHER HAYS
ONE EMBARCADERO CENTER, SUITE 500
SAN FRANCISCO, CALIFORNIA 94111

FAC SIMILE
(415) 931-0444

TELEPHONE
(415) 398-0848

7 December 2007

Via Email and First Class Mail

Michael W. DeVries, Esq.
Andrew J. Fossum, Esq.
Latham & Watkins
650 Town Center Drive 20th Floor
Costa Mesa, California 92626

re: Kevin Vu; *Sinhdarella, Inc. v. Vu*, U.S.
Dist. Ct., N.D. Cal. No. C07 04353 WHA

Gentlemen:

This letter responds to the questions raised in several emails over the past few weeks, as summarized in Andrew Fossum's letter, dated 4 December 2007, to the undersigned.

Mr. Vu will be available for deposition Thursday 3 January and Friday 4 January 2008. He will be out of the country beginning Wednesday 9 January 2008, and will be out of the country and not available for deposition thereafter until sometime in February.

The telephone numbers of customers identified in my client's initial disclosures, to the extent known, have been disclosed in the Revised FRCP Rule 26 Disclosures emailed to you earlier today.

I do not represent any of the customers disclosed, and only requested that they be contacted through my office as a courtesy, which is why I presume you requested that Giang Nguyen, an individual disclosed by you pursuant to Rule 26, "should be contacted through Latham & Watkins LLP," whereas you stated that the individuals disclosed who are principals of your client "should be contacted *only* through Latham & Watkins LLP" (*italics added*).

Mr. Vu will *not* stop using the name "The Boiling Crab" as he believes that such use is lawful under 15 U.S.C. § 1115(b)(5), because this name was adopted by Mr. Vu without knowledge of your client's prior use and has been continuously used by him from a date prior to your client's registration of the mark, except during the brief period, during which he was not represented by counsel,

LAW OFFICES OF CHRISTOPHER HAYS

Michael W. DeVries, Esq.
Andrew J. Fossum, Esq.
Latham & Watkins
7 December 2007
Page 2

that he used the name "The Boiling Crayfish" because of what he has described as your threats to have the United States Marshal close his restaurant, and at a time that he was unaware of the defense cited above.

Please advise whether your client intends to deny that, under these circumstances, my client's use was "continuous" under the statute cited.

I represent Cafe Bonita, Inc., and am preparing an Amendment to Answer and a Stipulation between the parties permitting such amendment, both of which documents I expect to present to you for your review I the next few days.

If you agree to such stipulation, I will stipulate to any reasonable amendment to the Complaint required, and will accept service of a summons and complaint in the above-referred action on behalf of Cafe Bonita, Inc.

Yours very truly,

/s/ Christopher Hays

Christopher Hays

ch:ns
ec: Kevin Vu

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 650 Town Center Drive, 20th Floor, Costa Mesa, CA 92626-1925.

On **December 28, 2007**, I served the following document described as:

**DECLARATION OF ANDREW FOSSUM IN SUPPORT OF PLAINTIFF
SINHDARELLA, INC.'S MOTION FOR PRELIMINARY INJUNCTION**

by serving a true copy of the above-described document in the following manner:

BY U.S. MAIL

I am familiar with the office practice of Latham & Watkins LLP for collecting and processing documents for mailing with the United States Postal Service. Under that practice, documents are deposited with the Latham & Watkins LLP personnel responsible for depositing documents with the United States Postal Service; such documents are delivered to the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid. I deposited in Latham & Watkins LLP' interoffice mail a sealed envelope or package containing the above-described document and addressed as set forth below in accordance with the office practice of Latham & Watkins LLP for collecting and processing documents for mailing with the United States Postal Service:

Christopher Hays, Esq.
Law Offices of Christopher Hays
One Embarcadero Center, Suite 500
San Francisco, California 94111

Attorneys for Defendant
Kevin Vu

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **December 28, 2007**, at Costa Mesa, California.



Pamela J. Carvalho